

**DEC 16 2005****CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT****EDWARD K. METCALF,****Plaintiff - Appellant,****v.****ANCHORAGE DAILY NEWS,****Defendant - Appellee.****No. 04-36084****D.C. No. CV-03-00198-A-JWS****MEMORANDUM\***

**Appeal from the United States District Court  
for the District of Alaska  
John W. Sedwick, District Judge, Presiding**

**Submitted December 5, 2005\*\*****Before: GOODWIN, W. FLETCHER and FISHER, Circuit Judges.**

Edward K. Metcalf appeals pro se the district court's judgment following a bench trial in favor of Anchorage Daily News ("ADN") in his wrongful termination action alleging he was fired in retaliation for filing a previous lawsuit against ADN. We have jurisdiction pursuant to 28 U.S.C. § 1291. We review for

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

clear error findings of fact, *Deegan v. Cont'l Cas. Co.*, 167 F.3d 502, 508-09 (9th Cir. 1999), and we affirm.

The district court did not clearly err in finding that Metcalf's first lawsuit against ADN was not a substantial motivating factor in ADN's decision to implement new agreements with its carriers, and require all carriers to sign a new contract to continue working for ADN. *See id*; *Knickerbocker v. City of Stockton*, 81 F.3d 907, 911 (9th Cir. 1996).

The district court did not abuse its discretion in denying Metcalf's untimely motion for a jury trial because Metcalf failed to give any reason for the untimeliness. *See Pacific Fisheries Corp. v. HIH Cas. & Gen. Ins., Ltd.*, 239 F.3d 1000, 1002 (9th Cir. 2001); *Zivkovic v. S. Cal. Edison Co.*, 302 F.3d 1080, 1086-87 (9th Cir. 2002) (pro se status is not sufficient to grant relief from an untimely jury demand).

The district court did not abuse its discretion in denying Metcalf's motion for leave to amend, filed only one month prior to trial, because amendment would have caused undue delay and prejudice to ADN. *See Zivkovic*, 302 F.3d at 1087.

Metcalf's remaining contentions are unpersuasive.

ADN's motion for frivolous appeals damages is denied.

**AFFIRMED.**